



Department of Energy
Acquisition Regulation

No. 94-16

Date November 18, 1994

ACQUISITION LETTER

AUTHORITY

This Acquisition Letter (AL) is issued by the Procurement Executive pursuant to a delegation from the Secretary and under the authority of the Department of Energy Acquisition Regulation (DEAR) subsection 901.301-70.

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CONTENTS

CITATION

TITLE

DEAR 916.6

Time-and-Materials, Labor-Hour, and Letter Contracts

- I. Purpose. The purpose of this AL is to issue guidance waiving the requirement for a determination and findings documenting the suitability of a time-and-materials contract.
- II. Background. Federal Acquisition Regulation (FAR) 16.601(c) provides that a time-and-materials contract may be used only after the contracting officer executes a determination and findings that no other contract type is suitable.
- III. Guidance. This AL transmits the class findings and determination whereby the Department of Energy Procurement Executive grants a deviation on a class basis to the requirement regarding a determination and findings for the use of a time-and-materials contract at FAR 16.601(c).
- IV. Effective Date. This Acquisition Letter is effective on September 9, 1994.
- V. Expiration Date. This Acquisition Letter remains in effect until canceled or superseded.

FINDINGS AND DETERMINATION
CLASS DEVIATION TO THE
FEDERAL ACQUISITION REGULATION

I. FINDINGS

A. Federal Acquisition Regulation 16.6, Time-and-Materials, Labor-Hour, and Letter Contracts, contains the following requirement at subparagraph (c):

"Limitations. A time-and-materials contract may be used (1) only after the contracting officer executes a determination and findings that no other contract type is suitable ..."

B. There are no statutory bases for this requirement.

C. During the process of pre-procurement planning which is required to be performed for each new procurement action, it is incumbent upon the contracting officer to review the characteristics of the procurement and, among other things, determine the proper contract type for that action. It follows that, since the selection of contract type is normally performed as a part of pre-procurement planning, then a regulation that requires a separate, formal determination and findings regarding selection of contract type causes contracting officers to perform reiterative actions that add no value to the procurement process. The underlying premise of this regulatory requirement is that contracting officers are not sufficiently skilled in procurement planning to make proper determinations regarding the types of contacts that will best fit the various procurement actions.

II. DETERMINATION

A. Based upon the above findings, I hereby determine that the requirement cited above that requires contracting officers to make determinations and findings regarding the use of a time-and-materials contract type is both duplicative of other required contract file documentation and of little value, and, therefore, should be eliminated.